

# How to Report Human Rights Violations Faced by LGBTIQ People to National Human Rights Institutions in South Asia



Advocacy Brief Developed by



The Global Fund

MULTI-COUNTRY SOUTH ASIA GLOBAL FUND HIV PROGRAMME

## Glossary

**Human rights** are basic rights that each person has as a human being. They include, but not limited to, the right to live, to be physically safe, to be treated equally with other people, to have privacy, and to be free to meet and form groups with other people, speak and express oneself, and from unfair detention.

**LGBTIQ** refers to Lesbian, Gay Bisexual, Transgender, Intersex, Queer – an umbrella term to represent people of diverse sexual orientations, gender identities and expressions, who may or may not identify with any of these terms, and for which there are several indigenous terms in South Asia such as *hijra*, *khawaja sira kothi*, *meti* etc.

**Complaint** refers to a statement – in writing or orally – that explains an incident in which a person's human rights have been denied or violated, and includes information on what happened, where the violation took place, who was the violator and other details of the event.

**Complainant** is a person who makes a complaint. **Violator** is a person who violates another person's human rights.

## What is the role of national human rights institutions (NHRIs)?

NHRIs are agencies that are tasked with protecting the human rights of people who are present within their countries. All persons have human rights. These human rights are inherent to people and necessary in order for them to live with dignity and freedom.

These human rights are explicitly provided for in international agreements that countries have signed, and written in national Constitutions – aimed at assuring all people of their protections.

It is these human rights that NHRIs have the duty to protect, by investigating alleged violations and recommending punishments against violators.

Generally, NHRIs inquire into human rights violations perpetrated by public servants, such as the police, government employees, and public authorities. However, in some instances, NHRIs also act to resolve violations by the private sector such as employers.

## What are the human rights violations that LGBTIQ people face?

Like all people, if LGBTIQ people are to achieve wellbeing and be respected and given worth in society they need to be assured of human rights and protections. Unfortunately, experience shows that these rights are, all too often, unavailable for many LGBTIQ people due to criminal laws in most of South Asia that punish same-sex sexual conduct, and give powers to the police to threaten and arrest transgender people for causing 'public nuisance'.

LGBTIQ people are often discriminated against for who they are. This happens in their homes, at schools or colleges, at workplaces, in housing, and while accessing healthcare. Evidences show that



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many of them are treated with dislike and sometimes discontinued from their jobs on discovery of their sexual orientation. Transgender people are often denied recognition of their preferred gender identity, which affects their ability to obtain basic identity documents.

Violations of their physical and emotional integrity – physical violence, forced 'conversion therapy', blackmail and extortion, humiliation and hate speech – also often occur. Their right to be free from violence, and an assurance of safety and security are compromised.

LGBTIQ people and organisations that publish information on sexuality, sexual health and HIV have faced shutdowns, violence and arrest. Their rights to freedom of speech and expression, and the right to health of LGBTIQ people who are recipients of this information are denied.

## How can NHRIs address these violations?

NHRIs can be approached by the victimised LGBTIQ people (or through their representatives) who seek to complain about rights violations that they have experienced. It is the duty of NHRIs to consider these complaints and respond to them by inquiring into their accuracy and substance, and investigating the violations that have been brought to their notice.

## Who can make complaints to NHRIs?

If an LGBTIQ person has faced a human rights violation, they or their friend, family member or associate can lodge a complaint about it to the NHRI. This can be done in writing, by telephone, by email, or in person at an NHRI office.

An organisation can also make the complaint on behalf of an LGBTIQ person.

NHRI complaints processes are kept simple so that anyone can access the institution, without requiring the assistance of lawyers.

NHRIs are empowered to investigate an alleged human rights violation through its own action, if such a violation comes to its knowledge without even a complaint being filed.

## How can complaints be made to NHRIs?

NHRIs often have simple procedures to make complaints. These complaints can be made free of cost. Even if a person spends some money in making a complaint, some NHRIs (Sri Lanka) have the power to pay back these costs to the complainant.

As a general rule, complaints should state the facts of the human rights violation, including the action or inaction of the alleged violator. Complaints should be lodged as soon after the violation has occurred as possible. Some NHRIs place a time limit on how late after the event a complaint can be made. In India, a complaint after one year will not be responded to, while others are flexible. In Pakistan, three months is considered as the ideal timeframe.

## What can an NHRI do after receiving a complaint?

NHRIs are given a variety of powers to examine a complaint and ascertain whether and what human rights violation took place, and by whom. To do so, NHRIs are empowered to undertake inquiries and investigations.

While investigating a complaint the NHRI is often considered to have the powers of a legal court. As such, it has the power to:

- call individuals – such as witnesses – to come to its office to provide relevant information, documents and official records; and
- receive evidence in the form of sworn testimonies.

## What kind of help can a complainant obtain from an NHRI?

The NHRI can offer various forms of help to a complainant, if its investigation has found that a human rights violation has taken place.

Some of this help can come in the form of recommendations to the government to take appropriate action in the case. This can include recommending the payment of compensation to the victim or their family, and prosecution of the violator.

NHRIs can also apply to legal courts to get orders for the violations of human rights. Court orders can include forcing a violator to correct a violation, or giving the violator a financial penalty. If the victim is in detention, NHRIs can visit the detention facility to ensure he is treated rightfully.

In some cases (such as in Sri Lanka), NHRIs are tasked to encourage parties to attempt conciliation or mediation of disputes, and to recommend prosecution only if these approaches fail.

Some NHRIs in South Asia have supported human rights claims of LGBTIQ people. These include:

- ensuring that a person is given back his job after being removed due to his sexual orientation,
- stopping police harassment and violence against transgender people, and
- issuing a notice to a college that discriminated against a transgender teacher in obtaining housing.

## Will an NHRI protect the confidentiality of a complainant?

NHRIs are generally not required to treat complaints as confidential. Yet, given the difficult circumstances that LGBTIQ people are often in and potential threats to their personal safety in cases of disclosure of their identity as complainants, complaints should contain a request to the NHRI to suppress the complainant's identity.

## How to submit complaint online?

To get more information about an NHRI where you live, including how to submit a complaint online, visit the following websites:

Afghanistan: <http://www.aihrc.org.af/>

Bangladesh: <http://www.nhrc.org.bd/>

India: <http://nhrc.nic.in/>

Nepal: <http://www.nhrcnepal.org/>

Pakistan: <http://www.mohr.gov.pk/>

Sri Lanka: <http://hrcls.lk/>